

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: DRY CREEK FARMS Facility #64489 Sioux County, Iowa	 ADMINISTRATIVE CONSENT ORDER NO. 2014-AFO- 05
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TO: Glenn A. Rozeboom, Registered Agent
Dry Creek Farms, Inc.
2722 350th Street
Rock Valley, Iowa 51247

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Dry Creek Farms, Inc. (DCF) for the purpose of resolving violations resulting from a manure discharge from DCF's animal feeding operation that resulted in water quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

<u>Relating to technical requirements:</u> Sheila Kenny, Field Office 3 Iowa Department of Natural Resources Gateway North Mall-1900 North Grand Spencer, Iowa 51301 Phone: 712/262-4177	<u>Relating to legal requirements:</u> Kelli Book, Attorney for the DNR Iowa Department of Natural Resources 7900 Hickman Road, Suite 1 Windsor Heights, Iowa 50324 Phone: 515/725-9572
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Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent violations of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code chapter 459A and the rules adopted or permits issued

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pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. DCF owns and operates a combined dairy operation located in the SW 1/4 of Section 11, Plato Township, Sioux County, Iowa. The facility has a total capacity of 1,575 animal units, with 100 manure dairy cows, 500 dairy heifers, and 200 beef cattle in open feedlots and 525 mature dairy cows in confinement. Runoff from the open feedlots flows into a settled open feedlot effluent basin (SOFEB). The SOFEB was constructed in 2009 and has a capacity of just under 13.5 million gallons. There are two inlet structures to the basin and both consist of picket fence structures with concrete pads and earthen berms, designed to settle out the solids. Manure from the confinement animals flows to a 625,000 gallon earthen basin, which is pumped to the SOFEB as needed to maintain adequate storage capacity. Dry Creek runs along the north side of this facility. The earthen basin is located about 100 feet south of the creek and the SOFEB is approximately 500 feet from the creek.

2. In 2009, DCF applied for a construction permit and an NPDES permit for the facility. A construction permit was issued for the facility on August 3, 2009. Subsequently, DCF withdrew its NPDES permit application, and an NPDES permit was never issued to the facility.

3. On May 28, 2013, DCF representative Glenn Rozeboom contacted DNR Field Office 3 to report that due to heavy rainfall over the weekend there was just one foot of freeboard remaining in the manure storage basin for the facility. He stated that he planned to irrigate using the gated pipe.

4. On May 29, 2013, Sheila Kenny, DNR Field Office 3 environmental specialist, visited the DCF facility and spoke to Steve Rozeboom. Mr. Rozeboom stated that eight inches of rain fell in the area on May 26-27, 2013.

5. Mr. Rozeboom stated that manure had been land applied from the basins one month prior to the visit. He stated that the earthen basin was emptied and that approximately three million gallons had been removed from the SOFEB. At the time of this visit, Ms. Kenny noted that the earthen basin had about three feet of freeboard and the SOFEB had about four feet of freeboard, but there was manure backing up and overflowing at the inlet of the SOFEB. DCF had built a containment berm extending from the southwest corner of the SOFEB to channel any overflow back through the existing freestall barn and then into the earthen basin; however, Mr. Rozeboom stated the containment berm was cut and the runoff was allowed to flow north into the field in an effort to prevent the earthen basin from overflowing directly to Dry Creek. Mr. Rozeboom stated that the discharge began the previous

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morning and Ms. Kenny noted that the discharge was ongoing at the time of her visit. Ms. Kenny observed the discharge flowing directly north through the field and into Dry Creek. The creek was brown and foamy at the discharge location. Ms. Kenny collected a sample of the discharge as it entered Dry Creek. The laboratory analysis indicated the following: an E.Coli concentration of 1,700,00 [MPN]/100 mL, an ammonia concentration of 430 mg/L, a chloride concentration of 410 mg/L, a BOD concentration of 1,600 mg/L, and a total suspended solids concentration of 1,500 mg/L.

6. Ms. Kenny told Mr. Rozeboom to take every possible action to stop the existing discharge. She recommended to use the freeboard space in both basins to store as much of the runoff as possible. Mr. Rozeboom indicated the facility planned to start irrigating onto the field north of Dry Creek but was waiting for pumps to be available. Ms. Kenny reminded Mr. Rozeboom to monitor the application field closely to prevent further discharge as the soil was saturated.

7. On June 11, 2013, Ms. Kenny conducted a follow-up visit to the facility and spoke to Glenn, Steve and Brian Rozeboom. The Rozebooms stated they obtained pumps on Friday and began irrigation above the terraces on the field west of the facility. The irrigation lasted for about three and a half hours on Friday and then another half hour on Saturday. They stopped the irrigation because the ground was too saturated.

8. On August 26, 2013, DNR Field Office 3 issued a Notice of Violation letter to DCF for the May 2013 manure discharge. The letter stated that the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.103(1) states that the DNR may evaluate any animal feeding operation that is not defined as a large or medium CAFO, and designate it as a CAFO if, after an on-site inspection, it is determined to be a significant contributor of manure or process wastewater to waters of the United States. In making this determination, the DNR shall consider the following factors: the size of the operation and the amount of the manure or process wastewater reaching waters of the United States; the location of the operation relative to waters of the United States; the means of conveyance of manure or process wastewater to waters of the United States; the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the United

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States; and other relevant factors. Due to the combination of the confinement and open lot and the mature and immature animals, this site has 1,575 animal units. The facility is located within one hundred feet of Dry Creek and the land slopes toward the creek. The current discharge was caused by the intentional cutting of the berm allowing the manure, open feedlot effluent and process wastewater to flow directly to the creek. This resulted in a significant quantity of manure, open feedlot effluent and process wastewater was discharged. Based on the above-stated facts, the DNR is designating DCF a CAFO.

3. 567 IAC 65.103(3) states the owner or operator of a designated CAFO shall apply for an NPDES permit no later than 90 days after receiving written notice of the designation.
4. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 3's investigation it was determined that manure from the DCF facility was discharged into a water of the state. The above-mentioned facts indicate violations of these provisions.
5. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. During DNR Field Office 3's investigation it was determined that manure from the DCF facility had been discharged into a water of the state. The above facts indicate a violation of this provision.
6. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants. Additionally, DNR Field Office 3 personnel observed discolored and foamy water in Dry Creek. The above mentioned facts indicate violations of the general water quality criteria.
7. 567 IAC 65.2(9) and 567 IAC 65.101(9) require that a person storing, handling, transporting or land applying manure from an animal feeding operation who becomes aware of a release shall notify DNR of the occurrence or release as soon as possible but not later than six hours after onset or discovery of the release. DCF employees were aware of the manure release but failed to notify the DNR of the release. The above-mentioned facts indicate a violation of these provisions.

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V. ORDER

THEREFORE, the DNR orders and DCF agrees to do the following:

1. DCF shall operate and maintain the facility in compliance with all applicable DNR rules and state laws;
2. DCF shall submit a complete NPDES permit application for its CAFO within 90 days of the date the Director signs this administrative consent order. A nutrient management plan must be submitted with the NPDES permit application; and
3. DCF shall pay an administrative penalty in the amount of \$5,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” DCF gained an economic benefit by failing to properly contain the manure from its facility. DCF intentionally released the manure from the basin by cutting the containment basin. This allowed the facility to avoid the costs associated with proper land application. These costs would have included hiring a commercial applicator or obtaining the proper application equipment. Based on the above facts, the economic benefit DCF received was at least \$500.00 and that amount is assessed for this factor.

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Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 3 documented a manure discharge that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$2,000.00 is assessed for this factor.

Culpability – DCF has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. DCF intentionally removed a section of the containment berm, allowing the discharge to occur. Little to no action was then taken to stop the discharge or otherwise monitor the discharge. Therefore, \$2,500.00 is assessed for this factor. *we didn't open it till we had permission after consulting with DNR*

VII. WAIVER OF APPEAL RIGHTS

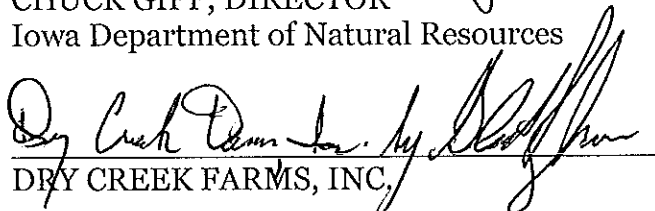
This administrative consent order is entered into knowingly and with the consent of DCF. For that reason DCF waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 28th day of
February, 2014.


DRY CREEK FARMS, INC.

Dated this 25 day of
February, 2014.

Facility #64489; Kelli Book, DNR Field Office 3, EPA, VIII.D.1. and VIII.D.3.a